



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. 0-2002

Re: Is the Comptroller authorized to issue duplicate warrant to the true owner of an original warrant where the original warrant is held by a bank and is neither lost nor destroyed, but the possession of which is purposely withheld by the bank from the true owner for the reason that the bank has previously paid the warrant upon a false or forged endorsement?

This will acknowledge receipt of your letter of March 19, 1940, requesting an opinion of this department on the above stated question.

Your letter reads as follows:

"Is this department authorized to issue duplicate warrant to the true owner of an original warrant where the original warrant is held by a bank, and is neither lost nor destroyed, but the possession of which is purposely withheld by the bank from the true owner for the reason the bank has previously paid the warrant upon a false or forged indorsement?"

"I refer you to Article 4365, R. C. S., also to your opinion numbered 0-896.

"This request is made with reference to warrants other than unemployment compensation warrants."

Article 4365, Vernon's Annotated Civil Statutes, reads as follows:

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"The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County."

We quote from Texas Jurisprudence, Vol. 34, page 636, as follows:

"A state, municipal, county, district or school warrant is an instrument, generally in the form of a bill of exchange or order, drawn by an officer upon the person having charge of the public funds, directing him to pay an amount of money specified to the person named, or his order, or to bearer. In substance warrants are mere promises to pay the amount

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specified; they are not bonds, nor are they negotiable instruments; they are only prima facie evidence of an indebtedness, serving as the convenient mode of conducting the public's business."

Article 4365, supra, defines the extent and limitation of the power of the Comptroller of Public Accounts of the State of Texas to issue duplicate warrants. The statutes of the state are silent upon the authority of the Comptroller to issue duplicate warrants except in the express instance of loss or destruction. Consequently, where a warrant is still in existence the Comptroller has no authority to issue a duplicate.

In our opinion No. 0-385, it was held that: "It is our opinion that Article 4365 prohibits the issuance of a duplicate warrant where the loss or destruction of the original has not been called to the attention and proved to the satisfaction of the Comptroller in the manner provided in said statute."

Under the facts and circumstances stated in your letter, we are of the opinion that the proper procedure would be for the owner of the warrant in question to institute proceedings for the possession of the warrant against the party holding said warrant from him.

In view of the foregoing, your question is respectively answered in the negative.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Ardell Williams*

Ardell Williams  
Assistant

AW:GO

APPROVED MAR 28, 1940

*George H. Mann*

ATTORNEY GENERAL OF TEXAS

